

judgment in the Superior Court prior to the passing of the said Act. *Couture v. Bouchard* followed. TASCHEREAU and GWYNNE, JJ., dissenting.

FOURNIER, J.: That the estate is not applicable to cases already instituted or pending before the courts, no special words to that effect being used.

Appeal quashed with costs.

H. Abbott, Q.C., for the appellant.

St. Jean for the respondent.

Quebec.]

BROWN v. LECLERC.

Loading of steamer—Accident—Neglect of usual precaution—Liability of employer.

Where two stevedores are independently engaged in loading the same steamer, and, owing to the negligence of the employees of the one an employee of the other is injured, the former stevedore is liable in damages for such injury.

The want to observe a precaution usually taken in and about such work is evidence of negligence. GWYNNE, J., dissenting.

Appeal dismissed with costs.

Geoffrion, Q.C., for the appellant.

Bronin, Q.C., for the respondent.

Quebec.]

MARTINDALE v. POWERS.

Quality of plaintiff—General denegation—Art. 144, C.C.P.—Don mutuel—Property excluded, but acquired after marriage.

Held, (1) affirming the judgment of the court below, the quality assumed by the plaintiff in the writ and declaration is considered admitted, unless it be specially denied by the defendant. A *défense au fonds en fait* is not a special denial within the meaning of Art. 144, C.C.P.

(2) Where by the terms of a *don mutuel* by marriage contract a farm in the possession of one of the sons of the husband under a deed of donation was excluded from the *don mutuel*, and subsequently the farm in question became the absolute property of the father, the deed of donation having been resiliated for value, it was held that by reason of the resiliation the husband had acquired an independent title to the farm, and it thereby became charged for the amount due under the *don mutuel* by marriage contract, viz., \$5,000, and that after the husband's death the wife (the respondent in this case) was entitled, until a proper inventory had been made of the deceased's estate, to retain possession of the farm. TASCHEREAU and GWYNNE, JJ., dissenting.

Appeal dismissed with costs.

Racicot, Q.C., and *Amyrauld* for the appellant.

Baker, Q.C., for the respondent.

CORBETT v. SMITH.

Nova Scotia.]

[May 1.

Deed—Action to set aside—Undue influence—Evidence.

C., executrix under a will, brought an action to have a deed executed by testator some two months before the date of the will set aside and cancelled